

RECORD OF ORDINANCES

Ordinance No. 3677

Passed: August 25,

2020

AN ORDINANCE ADOPTING AMENDMENTS TO CHAPTER 154: ZONING CODE, CHAPTER 153: SIGNS, AND CHAPTER 156: FLOOD DAMAGE PREVENTION CODE OF THE CODE OF ORDINANCES OF WEST CARROLLTON, TO BRING THE REQUIREMENTS FOR AREA VARIANCES INTO COMPLIANCE WITH THE OHIO SUPREME COURT DECISION IN *DUNCAN V. MIDDLEFIELD*.

WHEREAS, the Ohio Supreme Court decision in *Duncan v. Middlefield*, Ohio St.3d 83 (1986) held that the standard for granting a variance which relates solely to area requirements should be a lesser standard than the standard applied to variances which relate to use, and therefore an application for an area variance need not meet the higher standard of "unnecessary hardship" in complying with the zoning requirement, but rather must merely show "practical difficulties" in complying with the requirement; and

WHEREAS, an application has been filed by the City of West Carrollton proposing text amendments to Chapter 154: Zoning Code, Chapter 153: Signs, and Chapter 156: Flood Damage Prevention Code of the Code of Ordinances of the City of West Carrollton to bring the requirements for area variances into compliance with the *Duncan* decision; and

WHEREAS, a public hearing was held on June 18, 2020 by the West Carrollton Planning Commission, at which time all people who wished to testify gave their comments, and the Planning Commission unanimously recommends approval of the proposed amendments; and

WHEREAS, notification of a public hearing before the City Council regarding this matter was properly advertised in a newspaper of general circulation on July 2, 2020 in accordance with Section 154.08.01(D)(1) of the Zoning Code; and

WHEREAS, a public hearing was held by the West Carrollton City Council on August 11, 2020, at which time all people who wished to testify gave their comments; and

WHEREAS, Sections 154.05.05(C) of the West Carrollton Zoning Code specifies circumstances which justify amending the Zoning Code; and

WHEREAS, the City of West Carrollton has determined that adoption of the proposed text amendments to Chapter 154: Zoning Code, Chapter 153: Signs, and Chapter 156: Flood Damage Prevention Code of the Code of Ordinances of the City of West Carrollton to bring the requirements for area variances into compliance with the *Duncan* decision is in the best interest of the citizens of West Carrollton to preserve and enhance property values and protect the public health, safety and welfare.

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NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, COUNTY OF MONTGOMERY, STATE OF OHIO:

SECTION 1: That the City Council makes the following findings of fact with respect to the proposed text amendments pursuant to case T-20-1, said findings of fact based upon criteria found within Section 154.05.05(C) of the Zoning Code:

- a) The Ohio Supreme Court decision in *Duncan v. Middlefield*, Ohio St.3d 83 (1986) held that the standard for granting a variance which relates solely to area requirements should be a lesser standard than the standard applied to variances which relate to use, and therefore an application for an area variance need not meet the higher standard of “unnecessary hardship” in complying with the zoning requirement, but rather must merely show “practical difficulties” in complying with the requirement
- b) The proposed amendments to the Zoning Code, Sign Code, and Flood Damage Prevention Code support the goal of the *2009 West Carrollton Sustainable Comprehensive Plan* to create additional flexibility in land use controls, thereby enhancing property values and facilitating private investment. The lesser “practical difficulties” standard to grant an area variance could support other goals of the plans such as the retention and expansion of existing businesses, the re-use of vacant buildings and sites, and increasing the variety of housing options in the city. The proposed amendments can be justified on the grounds that the change is in conformance with the Comprehensive Plan of the city.
- c) The city’s Zoning Code is in error since it does not comply with Ohio law in the *Duncan* decision. The existing “unnecessary hardship” standard for the city’s variance procedures needs to be corrected to the lesser “practical difficulties” standard. As such, the proposal can be justified on the grounds that there is an error in the Zoning Code.

SECTION 2: That amendments to Chapter 154: Zoning Code, Chapter 153: Signs, and Chapter 156: Flood Damage Prevention Code of the Code of Ordinances of the City of West Carrollton be and hereby are amended as reflected in Exhibit 1, Exhibit 2, and Exhibit 3, attached hereto.

SECTION 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

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Passed: August 25, 2020

SECTION 4: That this Ordinance shall take effect from and after the earliest period allowed by law.

Passed: August 25, 2020



Mayor

Attest: 

Clerk of Council

Effective Date: September 24, 2020

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Ordinance No. 3677

Passed: August 25,

2020

CERTIFICATE

The undersigned, Clerk of Council of the City of West Carrollton, Ohio, hereby certifies the foregoing is a true and correct copy of Ordinance 3677, passed by said Council on the 25th day of August, 2020.

Clerk of Council

Dated: _____

ORDINANCE 3677

EXHIBIT 1

Key: Add text shown with **highlights**
Delete text shown with ~~strikethroughs~~

Title XV: Land Usage **Chapter 154: Zoning Code**

§ 154.02.01 DEFINITIONS.

VARIANCE. A variation from the strict interpretation of the terms of this zoning code, owing to peculiar conditions or circumstances which apply only to the property in question, and no other. As used in this zoning code, a variation is authorized only for height, yard, setback, minimum building size, parking requirements, lot size, frontage, and area of all accessory buildings located on the property

A departure from the strict application of a provision of this zoning code relating to bulk or area requirements for a specific parcel, without changing the zoning ordinance or the underlying zoning of the parcel and meeting the general intent of this zoning code. Use variances are prohibited.

§ 154.04.01 NONCONFORMING USES.

Nonconforming uses include buildings, structures, or uses which were lawfully existing prior to the adoption of this zoning code, but which are prohibited or further restricted as a result of the provisions adopted in this zoning code.

(H) Nonconforming Lots of Record.

(1) The construction of a conforming structure or the conduct of a permitted use shall be allowed on any lot of record which existed at the time of adoption or amendment of this zoning code, and which has a lot size or frontage less than that required for the structure or permitted use in the zoning district in which the lot is located. Variances **shall be granted in accordance with Section 154.06.01** of any development standard other than the minimum lot size or frontage requirements shall be obtained only through action of the Board of Zoning Appeals.

§ 154.05.03 DUTIES AND RESPONSIBILITIES OF THE ZONING ENFORCEMENT OFFICER.

The duties and responsibilities of the Zoning Enforcement Officer or his designated representative include:

(C) Approve zoning certificates and occupancy certificates to ~~insure~~ **ensure** that the proposed use is in accordance with all of the provisions of this Zoning Code, and maintain a complete record of all the certifications. The Zoning Enforcement Officer, upon receipt of a request for a departure from established dimensional requirements set forth in Chapter 153: Signs and Chapter 154: Zoning Code, may administratively grant a waiver from said dimensional requirements only if all of the following criteria are met:

(1) The request is a modest departure from the established dimensional requirements, which shall constitute not more than ten (10) percent of the maximum permitted dimension; and

(2) The adjacent property owners provide the City with a signed letter of approval for such a waiver; and

(3) Such waiver will promote a more development-friendly atmosphere while maintaining reasonable development standards and administrative efficiency; and

(4) Administrative variances shall be granted in accordance with the standards set forth in Section 154.06.01. No use variances shall be granted. Special circumstances or conditions exist applicable to the land or buildings for which the administrative variance is sought, which are peculiar to such land or buildings and do not apply generally to land or buildings in the area, and which are such that the strict application of the dimensional requirement would deprive the applicant of the reasonable use of such land or building, thus creating a hardship. These circumstances or conditions may include exceptional narrowness, shallowness, shape, topographic conditions, visibility or other extraordinary physical features of the land or buildings; and

—(5) The administrative variance granted shall provide the minimum necessary relief to alleviate the hardship; and

—(6) Granting of the administrative variance will be in harmony with the general purpose and intent of the applicable code, will not be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare, and does not conflict with other local, state, or federal laws or regulations; and

—(7) The administrative variance does not constitute a change in use.

§ 154.05.04 DUTIES AND ROLE OF THE CITY PLANNING COMMISSION.

(7) *Conditional Uses.* The Planning Commission may hear and decide on, in accordance with the provisions of this Zoning Code, applications for a conditional use permit as well as applications for any variance submitted with the application for a conditional use permit as set forth in Section 154.07.01(B)(5).

§ 154.06.01 VARIANCES.

(A) Purpose: Purpose. The Board of Zoning Appeals may authorize upon appeal, by reasons of exceptional narrowness, shallowness, shape, topographic conditions, or other extraordinary situation or condition of a lot, a variance from strict application of the provisions of this Zoning Code in accordance with the standards set forth in this section to relieve exceptional difficulties or undue hardship, provided the relief can be granted without substantial detriment to the public good and does not substantially impair the intent of this Zoning Code. Use variances are prohibited.

(B) Public Hearing and Notice: Public Hearing and Notice. A public hearing shall be held by the Board of Zoning Appeals within thirty (30) days after the receipt of an application for an appeal or variance from the Zoning Enforcement Officer or an applicant. Notice thereof shall be given to the parties in interest not less than 20 days prior to the date of the public hearing by first class mail and by publishing notice in one or more newspapers of general circulation in the city. The notice shall set forth the time and place of the public hearing, and the nature of the proposed variance. Additional notice may also be given by such other means as the granting authority deems appropriate, such as by posting notice on or near the parcel of land involved or at places which will be conspicuous to the neighboring properties and to the public. Failure of any person, other than the applicant, to receive notice of any hearing or public hearing

shall in no way affect the validity of the action taken. The public hearing must be open to the public and testimony should be taken under oath and subject to cross-examination.

(C) ~~Findings:~~ No variance shall be granted unless the Board finds that all of the following conditions exist:

—(1) ~~Written Application:~~ Written Application. The requested variance must be in writing, submitted by the filing deadline established in the Board of Zoning Appeals Schedule of Meetings, and contain the following information which demonstrates that the variance request meets the requirements of Section 154.06.01:

—(a) Name, address, and phone number of applicant(s);

—(b) Legal description of property;

—(c) Description or nature of variance requested; and

—(d) A fee as established by ordinance.

(1) A fully completed Variance Application Form provided by the City, signed by the property owner or the owner's designated agent, and properly notarized;

(2) If necessary, a fully completed Agent Authorization Form provided by the City, signed by the property owner, and properly notarized;

(3) The owner names, addresses, and parcel numbers of all property located within two hundred (200) feet of the property in question, along with a corresponding map showing these parcels;

(4) A site plan drawn to scale indicating the dimensions of all existing and proposed structures and their distances to each property line, as well as photographs of the premises;

(5) For sign variances, a site plan and elevations drawn to scale showing the location, size, height, setback, color scheme, method of lighting, and method of support of the proposed sign;

(5) Any other information or materials necessary to support the application;

(6) Payment of an application fee as established in Chapter 37: General Fee Schedule.

—(2) ~~Granting of the variance will be in harmony with the general purpose and intent of this Zoning Code on the district in which it is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.~~

—(3) ~~The proposed variance will not constitute a change, including a variation in use, on the official zoning district map. The Board of Zoning Appeals shall not approve a variance for a use which is not permitted or conditionally permitted in the zoning districts in which the property, building, or structure is located. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.~~

—(4) ~~There must exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such land or buildings and do not apply generally to land or buildings in the area, and which are such that the strict application of the provisions of this Zoning Code would deprive the applicant of the reasonable use of such land or~~

building. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land.

—(5) There must be proof of hardship to the owner, as distinguished from a mere inconvenience, created by the strict application of this Zoning Code. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this Zoning Code; it must be suffered directly by the property in question; and evidence of variances granted under similar circumstances need not be considered.

—(6) Granting the variance requested will provide the minimum necessary relief to alleviate the hardship. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Zoning Code would result in unnecessary hardship.

—(7) The proposed variance will not impair an adequate supply of light and air to adjacent property; substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.

—(8) The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

—(D) ~~Authorized Variances.~~ Variances from the regulations of this Zoning Code shall not be granted unless the Board makes specific findings of fact, based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed in this section, if applicable, have been met by the applicant. Variances may be granted as guided by the following:

—(1) To permit any yard or setback less than the yard or setback required by the applicable regulations.

—(2) To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but generally the respective area and width of the lot or lots should not be less than eighty (80) percent of the required area and width.

—(3) To permit the same off-street parking facility to qualify as required facilities for two or more uses, provided that substantial use of such facility by each user does not take place at approximately the same hours of the same days of the week.

—(4) To reduce the applicable off-street parking or loading facilities required, but generally by not more than thirty (30) percent of the required facilities.

—(5) To allow for the deferment of required parking facilities for a reasonable period of time, such period of time to be specified in the variance.

—(6) To increase the maximum distance that required parking spaces are permitted to be located from the use served, but generally not more than forty (40) percent.

—(7) To increase the maximum allowable size or area of signs on a lot, but generally by not more than twenty-five (25) percent.

—(8) To increase the maximum gross floor area of any use so limited by the applicable regulations, but generally not more than twenty-five (25) percent.

~~(E) Action by Board of Zoning Appeals. Within thirty (30) days after the public hearing required in this section, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the request for appeal or variance. The Board of Zoning appeals shall further make a finding in writing that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure.~~

(D) Board of Zoning Appeals Review. The Board of Zoning Appeals shall base its review of a variance application upon the complete application, upon any staff report, and upon any relevant and credible public testimony and evidence presented during the adjudication hearing. If the Board of Zoning Appeals finds that the information provided is insufficient to make a determination, it may suspend its review until sufficient information has been provided.

(1) *Burden of Proof.* The applicant shall be required to present by preponderance of reliable, probative, and substantial testimony and evidence that supports the applicant's request for a variance.

(2) *Decision Standards.* The Board of Zoning Appeals will consider the effect of the request on the public health, safety and welfare. Variances shall be granted only upon a determination that practical difficulties exist with respect to the property in question that would render strict application of the Zoning Code unreasonable and that substantial justice is done. This determination shall be made without regard to the existence of variances and nonconformities on other land, sites, or structures not presently under consideration. In determining whether practical difficulties exist sufficient to warrant a variance, the Board shall consider and weigh the following factors:

(a) Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;

(b) Whether the variance is substantial;

(c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

(d) Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);

(e) Whether the property owner purchased the property with the knowledge of the zoning restriction;

(f) Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

(g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; and

(h) Any other relevant factor.

(E) Action by Board of Zoning Appeals.

(1) The Board of Zoning Appeals shall grant, grant with conditions, or deny a variance application as presented and shall clearly state the findings upon which its decision is based.

(2) The Board of Zoning Appeals shall base its decision only upon the Decision Standards in this Chapter.

~~—(F) Supplementary Conditions and Safeguards.~~ The Board may prescribe any additional conditions and safeguards that it deems necessary to ~~insure~~ ensure that the objectives of the regulations or provisions to which the variance applies will be met. Any violation of such conditions and safeguards, when they have been made a part of the terms under which the variance has been granted, shall be deemed a punishable violation under this Zoning Code.

~~—(G)~~ (F) Following disapproval by the Board of Appeals of an application or request for variance from the literal interpretation of this Zoning Code, no subsequent application requesting the same variance shall be filed by any applicant, whether the person, firm, or corporation, until the expiration of 12 months after the original or subsequent disapproval.

~~—(H)~~ (G) Issuance of Permits.

(1) The Zoning Administrator shall issue permits to permit the action for which a variance was sought after the Board of Appeals grants a variance. Construction permits shall not be issued unless the plans substantially conform to those upon which a variance was granted. Any action that exceeds a granted variance shall constitute a violation of the Zoning Code.

(2) Approval of a variance shall expire if the applicant or owner fails to obtain the required zoning certificate or building permits within 180 days from the date of approval by the Board. The Board may grant a maximum of two extensions not exceeding 180 days each, upon written application. The Board shall not consider or grant any extension when a zoning map or text amendment has been enacted, subsequent to the approval of the original variance, which would affect the property subject to the variance.

ORDINANCE 3677

EXHIBIT 2

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Title XV: Land Usage

Chapter 153: Signs

§ 153.20 APPLICATION OF CHAPTER.

(a) The provisions of this chapter shall apply to and govern signs in all districts. No sign shall be erected or maintained unless it is in compliance with the regulations governing location and bulk of structures for the district in which it is located, unless such sign is otherwise specifically regulated by special use provisions relating to variances.

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ORDINANCE 3677

EXHIBIT 3

Key: Add text shown with **highlights**
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Title XV: Land Usage

Chapter 156: Flood Damage Prevention Code

APPEALS AND VARIANCES

§ 156.05.1 Appeals Board Established

A. The Board of Zoning Appeals, as established by the City, shall hear and decide appeals and requests for variances from the requirements of this chapter.

B. All meetings of the Appeals Board shall be open to the public except that the Board may deliberate in executive sessions as part of quasi-judicial hearings in accordance with law. The Appeals Board shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of all official actions. Records of the Appeals Board shall be kept and filed in the Civic Center, 300 E. Central Ave., West Carrollton, Ohio.

§ 156.05.2 Powers and Duties

A. The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.

B. Authorize variances in accordance with Section 156.05.4 of these regulations.

§ 156.05.3 Appeals

Any person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such person shall file, within 10 days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board.

Upon receipt of the notice of appeal, the Appeals Board shall fix a reasonable time for the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

§ 156.05.4 Variances

Variances shall be granted in accordance with the standards set forth in Section 154.06.01 of the Zoning Code. Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the

lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

~~— A. Application for a Variance~~

~~— 1. Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.~~

~~— 2. Such application at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request.~~

~~— 3. All applications for a variance shall be accompanied by a Variance Application Fee as set in the schedule of fees for Land Usage Applications, Chapter 157, of the West Carrollton Code of Ordinances adopted by the City of West Carrollton.~~

~~— B. Notice for Public Hearing. The Appeals Board shall schedule and hold a public hearing within thirty (30) days after the receipt of an application for a variance from the Floodplain Administrator.~~

~~— Prior to the hearing, a notice of such hearing shall be given in one (1) or more newspapers of general circulation in the community at least ten (20) days before the date of the hearing.~~

~~— C. Public Hearing. At such hearing the applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:~~

~~— 1. The danger that materials may be swept onto other lands to the injury of others.~~

~~— 2. The danger to life and property due to flooding or erosion damage.~~

~~— 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.~~

~~— 4. The importance of the services provided by the proposed facility to the community.~~

~~— 5. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.~~

~~— 6. The necessity to the facility of a waterfront location, where applicable.~~

~~— 7. The compatibility of the proposed use with existing and anticipated development.~~

~~— 8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.~~

~~— 9. The safety of access to the property in times of flood for ordinary and emergency vehicles.~~

~~— 10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.~~

~~— 11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.~~

~~— D. Variances shall only be issued upon:~~

~~— 1. A showing of good and sufficient cause.~~

~~— 2. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.~~

~~— 3. A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.~~

~~— 4. A determination that the structure or other development is protected by methods to minimize flood damages.~~

~~— 5. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.~~

~~— Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.~~

~~— E. Other Conditions for Variances~~

~~— 1. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.~~

~~— 2. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in Section 156.05.4C.1. to 11. have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.~~

~~— 3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.~~

§ 156.05.5 Procedure at Hearings

A. All testimony shall be given under oath.

B. A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.

C. The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.

D. The administrator may present evidence or testimony in opposition to the appeal or variance.

E. All witnesses shall be subject to cross- examination by the adverse party or their counsel.

F. Evidence that is not admitted may be proffered and shall become part of the record for appeal.

G. The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.

H. The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.

§ 156.05.6 Appeal to the Court

Those aggrieved by the decision of the Appeals Board may appeal such decision to the Montgomery County Court of Common Pleas, as provided in Chapter 2506 of the Ohio Revised Code.

STORMWATER RUNOFF, SOIL EROSION, AND SEDIMENTATION CONTROL

§ 156.33 PURPOSE.

The purpose of §§ [156.33](#) through 156.40 is to establish standards, principles, and procedures to regulate construction-oriented, earth-disturbing site development activities which cause or may cause adverse impacts of accelerated surface water runoff, soil erosion, and sediment deposition by provisions designed to:

- (A) Permit development without increasing the flooding of other lands;
- (B) Reduce damage to receiving streams and storm drainage systems and impairment of their capacity which may be caused by increases in the quantity and rate of water and sediment discharged;
- (C) Preserve the rights and options of all property owners and assure the long-term adequacy of storm drainage systems;
- (D) Prevent destruction of the natural features, soils, and vegetative cover of sites in the community; and
- (E) Promote and protect the public health, safety, and general welfare.

§ 156.39 ADMINISTRATION AND APPEALS.

(A) The approving agent shall review all applications for zoning certificates, subdivisions, and planned unit developments to determine that the requirements of §§ [156.33](#) through 156.40 have been satisfied.

(B) The costs of engineering review for site grading and drainage development plans shall be covered by a plan review fee. The plan review fee shall be paid by the applicant to the City at the time the final plans have been approved by the City. The fee shall be as set forth in Section [37.28](#) of Chapter 37, General Fee Schedule, of the Codified Ordinances of the City of West Carrollton.

(C) The provisions of §§ [156.33](#) through 156.40 may be varied as follows:

- (1) The approving agent may waive those requirements as specified in division (D)(4) below.

(2) As part of the review and approval process of subdivisions or planned unit developments, the Planning Commission has the authority to vary the provisions of §§ [156.33](#) through 156.40.

(3) All other appeals and requests for variances from the provisions of §§ [156.33](#) through 156.40 shall be heard may be granted by the Board of Zoning Appeals in accordance with the procedures set forth in Section 154.06.01 of the Zoning Code. A public hearing shall be held by the Board of Zoning Appeals in considering an appeal or application for a variance. Notice thereof shall be given not less than ten days prior to the date of the public hearing by posting notice on or near the parcel of land involved, at places which will be conspicuous to the neighboring properties and the public, or by publishing notice in a newspaper of general circulation in the City. Notice may also be given by such other means as the Board of Zoning Appeals deems appropriate. Failure of any person, other than the applicant, to receive notice of any hearing or public hearing shall in no way affect the validity of the action taken.

~~—(D) Variances shall be issued by the Board or Commission only if it finds all of the following conditions to exist:~~

~~—(1) The variance is the minimum necessary to afford relief;~~

~~—(2) There are exceptional or extraordinary circumstances or exceptional conditions applying to the property in general that do not apply to other properties in the vicinity;~~

~~—(3) Failure to grant the variance would result in exceptional hardship to the applicant;~~

~~—(4) The authorizing of the variance will not be of substantial detriment to other property or the public interest.~~

